

N.B.M.
(16)

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*So little did they understand
The desperate feats they took in hand,
They sprung the game they were to set,
Before they had time to draw the net *.*

BUTLER.

To all and sundry whom it may concern.

THE political conflict in this city is supported by a steady and well directed shower of paper bullets ; and, to mark the effects of such light artillery, creates no small amusement to the public.

In this warfare, the old observation holds true, that the most ignorant are the most violent, and that a *bee* is not a busier animal than a *blockhead*.

The party in power drop these useless creatures—the creatures fly to the opposite side, increasing the number and the noise—hence the least stir among them betrays itself.—The followers are instantly perceivable sweating about, and, like coachmen's dogs, lolling their tongues as if the carriage hung at their tails.

One of this *ever-toiling race* lately ventured far out of his province—he dubbed himself critic, and, in that character, published, *Remarks upon the address to the citizens of Edinburgh from the members of the town-council* ; an address which did them honour as men, and as governours of the city.

Far be it from me to charge a wrong upon the authors of the late disturbances, in that they have, against their knowledge and their consciences, spread a false alarm among the good people of Edinburgh,

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* Diffimulation continued for a few days longer would have done the business.

burgh, about the ruin of the city funds. *A terrifying lie* is at once an old, an useful, and a happy device in politics. Could any thing be better than to give out, that the garrison of a town were intending to cut the throats of the inhabitants?

Mordear opprobriis falsis—mutemque colores?

Falsus bonos juvat, et mendax infamia terret?

Quem nisi mendosum et mendacem?

HOR.

The fever of infatuation, which, ever since the dissolution of the last parliament, disordered the natural good sense of the leaders in the opposition, has at length abated: The *unexpected ridicule* which their precipitate election excited in the whole law department of England, has dispelled the clouds which surrounded them;—they remain convinced and petrified at the magnitude of their error.

The numerous followers of the party may possibly now be disposed to hear a little reason; but, from their late course of life, it is not probable their stomachs are yet in tone to relish simple food. They will please, therefore, to receive this paper as a medley, or rather a *salmagundy* to digest the proceedings of the 13th and 16th of September.—The partizans of the October election would be wanting in civility, did they not return their compliments to the other gentlemen for the *quarto volume*, the *livre magnifique*, presented them under the title of a *Narrative of the Elections, cum notis variorum*,—for the artificial ferment raised about the late petition,—and for the candour, the knowledge, and the good manners conspicuous in the *critic of the council address*.

Such as are unacquainted with political forms, will please know, that, in almost every instance where the election of a borough is contested, there are *two* petitions presented to the House of Commons, *one* from the candidate judging himself to be aggrieved, and
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the other, either from the incorporation, or from the individual electors in his interest. The reason is, that there often are a variety of matters proper to be gone into, upon the petition from the electors, which the candidate is not so directly entitled to insist upon.

By this measure the whole merits of the election, together with the rights of the electors, are brought before the commons. The resolutions of the House determine these rights, and afford a fixed rule in future cases, against which no evidence is admitted.

These petitions are uniformly considered to be relative to one matter, and are tried by the same committee. The difference of expence is no more than the fees of the second petition. The gentlemen in Mr Miller's interest knew this perfectly well.—How must they have smiled inwardly at the deluded tradesmen of Edinburgh, deserting their business by day, and crouding taverns at night with committees of grievances and apprehensions, all about the mighty sum of L. 1 : 11 : 6?

In every case where a measure is resolved in the town-council, a vote passes to support the expence of that measure; and, since Edinburgh had a magistracy, this never was omitted.

Upon the motion for the late petition, the usual vote of support was passed; and how disgraceful must it have been, had it not been done?—Would it become the metropolis of Scotland to stain their record by leaving in it so much as the possibility of an inference, that the expence of a petition from the town-council was to be defrayed by their representative in parliament?

It is not, indeed, the fault of the present *raging party* that our native city is not humbled to the earth. They, for the first time, locked up her electors. Their promises, nay, their writing, were disregarded. Nothing would do but the confinement of their bodies, and the intoxication of their souls. Such spectacles have sometimes been exhibited in the petty towns of Scotland:

land : Edinburgh, never before the month of September last, beheld the humiliating fight.

The legislature distinguished Edinburgh by a special statute for the conduct of her electors. But the party neglecting this act, endeavoured to model their election upon the statutes of the borough-districts, with which we of this city are totally unconcerned. Alas ! alas ! it was a baker's work ; and the batch is sticked !

The author of the remarks asks, What are the certain proceedings of the sheriff and Mr Williamson which infringe the constitutional rights of the city ?

The sheriff is alone answerable to the Commons, and in their house, it is said, he will in due time be sufficiently informed. With regard to Mr Williamson, the servant of the town, it is otherwise. Every inhabitant has an interest in his political conduct.—A worthy good-natured man, carried off by the whirlwind of politics, and landed in a premunire in the evening of life, cannot be an agreeable picture. But so it is, that his constituents, the magistrates and council, have, in point of duty, found themselves obliged to arraign him of a high misdemeanour, the execution of an indenture for the return of William Miller, Esq; which, in all its parts, is (said to be) *contrary to truth*.

The indenture witnesseth, in the *first* place, ‘ That the magistrates ‘ and council of Edinburgh were, upon the 16th of September, assembled for the election of Mr Miller, under the authority of his ‘ Majesty’s writ, *and of a precept issued out of the said sheriff’s office ‘ thereupon.*’ But the minutes of election also, under the subscription of the same gentleman, prove, that there was *no precept or legal authority* for such meeting or election. Had Mr Williamson, in his indenture, stated the real fact, viz. *that the meeting had been held without a precept, or by virtue of a copy of the precept*, the sheriff would not have dared to annex it to the crown writ.

In England, the sheriff's precept is uniformly returned by the mayors to the sheriffs, along with the certificate of the members elected. The purpose is, that the sheriff may be judge, whether his precept has been executed by the proper officer; and whether the election has been conducted in the terms therein prescribed. It is plain, then, to the lowest capacity, that, if *Edinburgh* had been an *English borough*, *William Miller, Esq;* could not have been returned; because his certificate would have come back to the sheriff *without its warrant*. In *Edinburgh*, the fact as to the possession and authority of the precept, is trusted *to the assertion in the certificate*. Mr Williamson did certify to the sheriff, that Mr Miller's election was made under the authority of the precept, which was not the fact; and consequently Mr Miller has been returned burghs for *Edinburgh*, by the evident partiality of the common clerk.

The same indenture *next witnesseth*, that the precept from the sheriff was directed *to the Lord Provost, Magistrates, and council*.—This stands flatly contradicted by the precept itself, which is directed to *Walter Hamilton, Esq; Lord Provost of the city of Edinburgh*. It is said in excuse, that the first description is to be found in the preceding returns. Because some former city clerk committed a most egregious blunder,—is that a reason why the blunder should be repeated by his successors?—Ought not every new writ to be recited in its own terms? Will the accumulation of error magnify into truth, and alter the nature of things? Will it justify a public officer for reciting the most material part of a writ, in words entirely different from the words of the writ itself; nay, for supposing words contrary to the intendment of the law, contrary to act of parliament, and the terms of the brieve issued by the crown, the warrant of the precept in question?—In short, so it is, that *no such precept as that recited by Mr Williamson, ever was issued, or ever did exist*.—It is commonly said, that a blot is not a blot till it be hit. Had any

former return for Edinburgh, equally erroneous, been quarrelled, this blunder alone would undoubtedly have been fatal to it.

The indenture goes on to witness, ' That the *magistrates, council, and community,*' were assembled in the council chamber, upon the 16th of September 1780.

The magistrates and council say, that this is also *contrary to truth*. Mr Williamson's minutes bear, that only *one* magistrate and *nine* counsellors were there assembled. The eight extraordinary deacons were also present; but, by the sett of the town, these deacons are declared to be *not of the council*. How then could these *eight* people, who *are not* members of the council, make *ten* a majority of the *twenty-five*, who *are* members of the council?—Supposing the other *fifteen*, viz. the Lord Provost, three bailies, and eleven counsellors, in whom the administration of the city is by the sett vested, had been in the next room; it is required,—*which of these rooms contained the magistrates, council, and community?* or, in other words, are there two constitutional councils, and two communities in Edinburgh, or any city in Europe, who may each of them do business, and contradict one another?—The common title of acts of council, upon particular occasions, is, *The Lord Provost, magistrates, and council, with the deacons ordinary and extraordinary*. The greatest part of these deacons were, no doubt, assembled at Mr Miller's election; but, *where were the magistrates, council, and community?*

The extraordinary deacons are not representatives of the people, but of their respective incorporations.—When the government of Edinburgh was restored in the 1746, by warrant from the crown, every burghers voted for the council of *twenty-five*, but none for the extraordinary deacons, nor are their names mentioned in the proceedings.—It was the election of the *provost, magistrates, and town-council* which was the object of the poll, and the subject of the report to the privy council; because, by them alone the community is represented.

sented.—Mr Joseph Williamfon was clerk to this very poll.—The question, therefore, again occurs, How can eight men, who are not representatives of the community, make ten a majority of twenty-five, who are its representatives? or, How can the presence of the eight enable the common clerk to invest *these ten* with the rights and titles of the community, against the prohibition of the other fifteen, who have exclusively enjoyed them for an hundred and fifty years?

There is no precedent in the records of Edinburgh of such a heterogeneous meeting, except one in the 1763; and, upon this occasion, evidence is to be produced, under Mr Williamfon's own hand, that he refused to acknowledge its legality, and that he was with difficulty prevailed upon to minute their proceedings in the character of a simple notary. By the indenture complained of, he has now certified to parliament, that a meeting of the same kind, even inferior in number to that in 1763, and assembled by their own authority, composed *the magistrates, council, and community of the city of Edinburgh*.

The ingenious annotator on the narrative, resolves this point with surprising ease; he says, 'That, unless it can be maintained, that the extraordinary deacons are not even constituent members of the extraordinary council, there were a legal quorum present upon the 16th of September.'—When a quorum of the ordinary council are in the house, and a question put, in which the extraordinary deacons have a voice, the quorum may no doubt be out-voted; but then no legal meeting can be constituted, nor any business entered upon, unless such a quorum of the ordinary council *be previously assembled*.

Lord Ilay's decree is not an alteration, but an explanation of the sett and usage. The usage, he declares, respecting the quorums, subsisted before his decree, and subsists at this moment.

Lord Ilay declares the quorum of the ordinary council to be thirteen; and by the expression seventeen of the extraordinary council, he

he means no more but that, in cases where the extraordinary deacons have a right to vote, there must be *seventeen present*, i. e. the quorum is augmented. He does not declare any one of the extraordinary deacons *to be of that quorum*; and practice alone has supposed the presence of a single extraordinary deacon necessary. Even that practice is not uniform; for these people, not being members of council, are under no obligation even to attend, and are not fined for absence. In several instances, the extra-deacons have tried their importance, by staying away in a body; but, as often as they did so, the ordinary council proceeded, without taking any notice of that circumstance.

Every body knows, that, by the institution of the Court of Session, *four* extraordinary Lords had a right to sit and vote with the *fifteen*, which *four* were termed *extraordinary Lords*; but they were neither bound to attendance, nor were counted in making a *quorum*, though their votes, *when given*, were equally effectual with those of the Ordinary Lords. Since *nine* of the ordinary Lords then made, and still make a quorum, it is plain that the remaining *six*, joined to the *four* extraordinary Lords, might carry any question depending before the court. It would be *ten to nine*; but these ten, *sitting down by themselves*, would never have made a quorum, or constituted a *court of session*; nor is any thing so illegal known to have been attempted, even during the rage of party which once disgraced that judicature.

To complete the business, Mr Williamson has returned Mr Miller as *unanimously* elected; though, at the very first step, four magistrates and eleven counsellors protested against his election, and the protests were renewed at every after movement.

Well had it been for Mr Williamson, and for the friends of Mr Miller, had they patiently listened to Mr Hunter-Blair, when he proposed to read to them the precept issued by the sheriff to Provost Stodart, at the preceding election, also the statute of the 6th of Queen Anne, in order to open their eyes as to the powers of a provost in
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such cases. The Convener's answer is not to be forgot. " Nothing (said he) that you can read will alter our opinion."

*For obstinacy's ne'er so stiff,
As when 'tis in a wrong belief.*

And so it is likely to fare with them and their cause.—Mr Williamson files himself *clerk to the election, and specially appointed to make the return thereof, conform to the statute in that behalf made.* The only statute, in that behalf made, appoints the sheriff to direct his precept *to the Lord Provost, to cause a burghers to be elected for that city.* The city is then, upon receipt of the precept, commanded to obey him, by electing their member. Now, attend, with what precision the terms of the crown writ and sheriff's precept coincide with the statute. The crown writ commands the sheriff *to cause his precept to be directed to the Lord Provost of the city of Edinburgh, 'freely and indifferently to elect for that city one burghers, of the most discreet and sufficient, according to the form of the statute in that case made and provided.'* And, in obedience, the precept is directed in these words: 'I require you, Walter Hamilton, Esq; Lord Provost of the city of Edinburgh, for yourself, and in name of the said city, *that you cause a citizen to be chosen and elected to represent the city, and that you cause return his name to me, in certain indentures to be made betwixt me and the clerk to be appointed for that effect.*' Why is all this to be done? The precept answers: 'That the affairs of the kingdom be not delayed for want of such person, or through an undue election.'

In all cases of executive government, some person is answerable for the execution. Is it not evident, then, that the Lord Provost, and no other person, is answerable for the conduct of an Edinburgh election? The statute of Queen Anne mentions the Lord Provost alone. The crown writ mentions no other officer or person, and the precept of the sheriff issues in the explicit terms of these authorities. What man, or set of men, then, is it, who are entitled to usurp his office, and,

to divest him of the power, and the trust committed in such express and anxious words?

In England, it is not uncommon to find the right of *executing the precept* in one officer, and the right of *making the return* in another. In Scotland, it is the case of all the districts; the eldest magistrate executes the precept, and the clerk makes the return. —No man will doubt, that the right of executing the precept is vested in the Lord Provost of Edinburgh; but, it has been said, that he is not the returning officer. This is also a mistake. The common clerk of the city is no more than a ministerial officer, an amanuensis to the provost. It is the provost who is charged to cause the election to be made, and to conduct the making of it. It is the provost who is charged to *cause return* the name of the person elected, *and to cause the indenture to be entered into by the clerk* with the sheriff. Upon what ground, then, has Mr Williamson designed himself *clerk to the election specially appointed to make the return thereof, conform to the statute*? Did not the provost discharge him, upon his highest peril, to return the name of *William Miller, Esq*; and did not Bailie Thomson, the oldest magistrate next to the provost, appear in person at the day of election, and discharge him from acting at that pretended meeting? Did he not protest that no return should be made; and if the clerks presumed to do otherwise, that they should be liable in the consequences of a *false return*?

The terms of the crown writ might, at one glance, have convinced the gentlemen of the other side, that the election for Edinburgh, in its principles and its form, differed entirely from all the district boroughs.

The sheriff, in the latter case, is, in general terms, commanded to cause a commissioner to be elected for each of these towns, and for the manner he is referred to the statutes prescribing the particulars of his duty; but, with regard to Edinburgh, the writ is special. He is commanded *forthwith* to issue his precept; whereas,
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by the district statutes, he is ordered to do it within *four days*. He is required to direct this precept to *the Lord Provost of the city of Edinburgh*; but, by the district statutes, the direction is, to the chief magistrate resident for the time *. The nature of the command itself is specified in the crown writ, viz. *that the Lord Provost should freely and indifferently cause a burghers to be elected*. The manner of making the election is trusted entirely to his own discretion. It is not so with the chief magistrates of the other boroughs. The precise mode of procedure is prescribed to them by the statutes. They are to summon the council; and even the very nature of that summons is pointed out. In short, every thing is trusted to the Lord Provost of Edinburgh, and nothing is trusted to the chief magistrate of any other town in Scotland.—This is an honourable distinction bestowed by the legislature upon the metropolis, which the friends of Mr Miller have unnaturally attempted to divest her of. The indenture returning that gentleman to parliament, is, from these premises, maintained not to be a return from the city of Edinburgh, but a manufacture of the sheriff and the clerk.—Is this to be suffered in the present or any future instance? Ill would the magistrates and council deserve the rank they hold, if they did not resent the affront, and teach these gentlemen their duty.

The author of the stately Narrative walks by himself over the course with a conscious certainty of the prize. Sometimes, for the amusement of the spectators, he deigns to take a canter, and sometimes, to the surprise of every body, rests and rears at a parcel of *cockle shells*—Provost Hamilton's subscription—Sir Laurence Dundas's journey to Linlithgow—the dragoons with swords and pistols, &c. &c.

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* The sheriff of Edinburgh, in his last precept, ventured to alter the direction, by making it alternative, either to the provost or chief magistrate. His authority for this measure will be called for in the proper place.

The statutes of the district boroughs are, by this gentleman, perpetually argued from; yet it is in no one place directly asserted, that these statutes, or any part of them, apply to Edinburgh. Nay, a paragraph is quoted from Mr Wight's treatise, to show that the election of Edinburgh is entirely different from those boroughs in every circumstance. He says, that it was optional for Provost Hamilton either to regulate his conduct by these statutes, or by the 6th of Queen Ann; and yet, at every turn, the former are supposed to apply, and the electors of Sir Laurence Dundas accused of violating them. At once, then, I answer, that these statutes do not apply to Edinburgh in any circumstance, nor are its electors obliged to take the least notice of them. Here lay the grand mistake of Mr Miller's friends. Accustomed to nothing but district elections, they could not get quit of the ideas thereby impressed; and, accordingly, in place of a member of parliament, they have produced a *Deacons Commissioner*.

But, even supposing that these statutes did regulate the Edinburgh election, and that the chief magistrate, resident for the time, should neglect, or refuse to comply with the order therein prescribed, I agree that such magistrate would incur the penalties inflicted by these acts; but where is the law that *entitles* the electors to divest him of his office, and to act by themselves? The case of the borough of Cricklade, lately published by Mr Douglas, affords the strongest imaginable instance of the partiality of a chief magistrate. He received public directions from a counsel feed by one of the candidates.—He closed the poll upon a silly pretence, so soon as his own friends got a head.—A great majority of the voters, in the interest of the other candidate, demanded the poll to be recommenced, which the bailif refused.—These voters did what to them seemed best; they gave their voices before a constable, the next magistrate in authority, and they gave notice to all the friends of the other member to attend, which they refused to do.—The committee of the house of commons,

commons, upon trial of the case, resolved, *that the constable's poll should not be given in evidence*; and the reasons were, because the constable was not the proper officer authorised to cause the election to be made, and because no person could be legally summoned to attend him.

The committee afterwards found neither of the members duly returned, and a new writ was ordered.

It is evident, then, that the district acts, though they did apply, would not, either directly, or even by analogy, authorise the election of William Miller, Esq. — While his friends too, had the acts of the 7th and the 16th of George II. perpetually in their mouths, Mr Joseph Williamfon, the clerk to their election, proclaimed publicly, and entered it upon record, *that none of these acts related to him or his brethren;—that he and they were at entire liberty, trusted by the legislature, and subject to none of the penalties or incapacities inflicted upon the clerks of the other boroughs in Scotland.*

From what source, then, it may be asked, did *the directors of the puppet-show*, (to use the annotator's expression), exhibited on the 16th of September, derive the idea of their piece? Where did they find the authority for returning a member of parliament at their own hand, without the ceremony of a provost, the authority of a precept, or the incumbrance of a council?—The author of the Narrative tells us, that they found it in the statute of the 6th of Queen Ann. They most ingeniously discovered, in the very act which invests the provost with the sole power of the Edinburgh election, *a warrant for assuming it to themselves.*

The annotator says, that, *on receipt of the precept*, the city is, by that act, required to elect their member. In a posterior note, we are told, that the precept was directed to the Lord Provost merely *as preses of the electors*. With great deference to the real abilities of this gentleman, we may be allowed to presume, that the issuing the precept to the Lord Provost *nominatim*, in obedience to an act of par-

liament and the crown writ, *had a meaning*, although such meaning might not have been particularly expressed, as it happens to be, both in the said act, crown writ, and precept themselves.—When the precept is issued to the provost, he is generally in his own house, preses of no public meeting. Since, then, the gentlemen will have it, that he receives it as *preses of the electors*, who is entitled to call these electors together, but the preses appointed by the legislature? He accordingly calls a council, and presents them with the precept, which is the authority for their election; and *then*, and *not till then*, we presume to say, *the city receives the precept*, and is, by the act, *required to elect*. The difference between the parties seems here to grow narrow; and yet great is the gulf between them. They insist, that the *receipt by the provost*, and the *receipt by the city*, are the very same thing; consequently, whether the provost be sick, or dies immediately after, the city has nothing to do but to get a copy of the precept, and to proceed to the election; in short, they will have it, that the *City is the Provost*, and the *Provost is the City*. We, upon our part, endeavoured, modestly, to shew, that the provost was only an *integral part* of the town-council at elections. The Narrative sneers at the integral capacity of his Lordship, and yet contends to make him a perfect whole, and no less a whole *than the city of Edinburgh*.

Sir Laurence Dundas's friends never carried the idea of the office to such a towering height; they only said, that, after the precept was issued to his Lordship, the election for Edinburgh could be conducted by no person but himself or his successor:—That no law existed which prescribes to the Provost any fixed time for presenting the warrant to the city, and, therefore, that this time is *discretionary*:—That all other officers in his situation possessed the same discretionary power, both in England and Scotland, until it was limited by special statutes; and hence they conclude, that the city was neither required nor authorised to elect their member till she received the precept
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from David Steuart, Esq; and then Sir Laurence Dundas was legally elected burghs, in terms of the precept, under authority of the statute, and of the chief magistrate entitled to preside.

‘ It is wonderful,’ says the author of the Narrative, ‘ how the influence of party-spirit will confuse the best judgment.’ It is wonderful, indeed; for when this gentleman talks of the provost, as preses of the electors, he swells him into *prodigious importance*.—The next moment he is a nobody, a being of no mark or likelihood. The only use of him, he says, is to have a paper put into his hand by the sheriff, after which no further respect is due to him or the office. The deacons are, at that moment, at liberty to fet him and his paper about their business, and to do just what they please.—Now, behold in what a different light the same gentleman places the Provost, when he comes to talk of the contested election of magistrates. ‘ His Lordship then becomes *the constitutional inherent preses of the council*; and we are told, that, in case of an equality of numbers, *there could be no election in his absence*. It is the *absence* of the Provost, that, at this time, throws such a brilliancy upon his office, and makes the author hold out the town-council as a trunk without a head :

Quaere peregrinum vicinia rauca reclamat.

The doors of the Archer’s-hall suffered a little in appearance from being *nailed upon the deacons*; and, in order to hide this unlucky circumstance, a painter was soon observed busy colouring them over. The author of the Narrative, like the painter with his brush, varnishes every damaged part of the cause, by the terms *usage* and *practice*; but the varnish is by far too thin. The abstract they have published clearly proves that the usage of Edinburgh has not been uniform, in any one circumstance, either of *the issuing* of the precept by the sheriff, the *fixing* a previous day for the election, or the intervening time between
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the time fixed and the election. In the two instances immediately following the union, it is evident that the Provost fixed the day of election himself; and if his successor, from complaisance to the council *when unanimous*, desired the day to be fixed by them, does that lay any obligation on those succeeding them to surrender the powers committed by the legislature? It may be generally held as a maxim, that no members of a corporation can abridge the privileges of their successors.—Because a town-clerk might mistake the mode and principles of an election, when no person had an interest to find fault, is his error to be eternal, to grow into a law? Practice is, indeed, a moth, that has been allowed to prey upon our Scots acts of parliament; but it is believed British statutes are made of harder materials, and that no bad usage or error has any effect upon their substance. In the very case of Sir James Stewart, quoted in the Narrative, the Lord Provost of Edinburgh claimed and exercised the full authority with which the law invested him. Sir James Stewart was too good a lawyer not to see the danger of putting the matter to trial. He therefore wisely *compromised it*; and he did so at the remarkable expence of *excluding all lawyers*, in time coming, from the representation of Edinburgh. A special act of council was, upon that occasion, unanimously made, which, at this moment, remains in force.—As to the other instance, the election of Mr Coutts, Provost Lind was at that time attending upon parliament in person. The election was unanimous. The Provost gave all the authority in his power to the proceeding. He did not positively discharge it, as Provost Hamilton did that of Mr Miller; and when there is no contest, irregularities of every kind pass in silence.

But, what say those champions of usage to the matter of the *quorum* of the town-council, which has uniformly been adhered to these hundred and fifty years, and which was never violated either by the council itself, or their clerks, till the 13th and 16th of September last? for it will be remembered, that the record was not fulfilled

lied by any part of the procedure of the disorderly meeting of the 1763.—It is strange that a perfect new council should have been discovered to elect Mr Miller, against the oldest usage known in the corporation, and yet that this same election should be rested upon other usages, in opposition even to statute law.

The whole writers on the other side take pleasure in representing the friends of Sir Laurence Dundas as liable to strong deceptions, and the *egregious author* of the remarks upon the council's address, talk of the members being occupied *with* political delusion. They have, no doubt, been amused at the spectacle of their opponents completely occupied by that *insania amabilis*,—an election without authority from the crown,—a magistracy and council, consisting of *ten* members out of *twenty-five*:—Acts of parliament no more applicable to Edinburgh than to London:—Close imprisonment, no confinement:—Debauchery of the electors, and the personal interference of a peer of the realm, no *undue influence*:—A mob of proxied bailies and counsellors, each man uncertain of the part he was to act *:—A proxy election of a magistracy hostile to themselves; and, last of all, a return of a member, in all its parts challenged as contrary to truth, have been the idols of the one party, and the laughing-stocks of the other.—The plot was hatched under damned dissimulation, fostered by riot, and is now about to die in disgrace.

The first step of this wonderful business was taken upon the *bare report* of a precept having been issued; the second proceeded upon the authority of a copy, signed by a *single notary*, and defective in every solemnity requisite even in such copies. The Convener handed it to Mr Williamson, and Mr Williamson, without giving it the credit of reading, put it in his pocket; a very genteel

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* Their offices, it seems, lay in protests; each man held a parcel, like a hand of cards; but they renounced most confoundedly in playing the game. Vide narrative, p. 51.

easy ceremony, without doubt. Lord Coke, the oracle of the law of parliament, prescribes a method somewhat different upon these occasions; he tells us †, ‘ That any election or voices, given before the precept be read and published, are void and of no force; for the same electors, after the precept is read and published, may make a new election, and alter their voices, *secundum legem et consuetudinem parliament.*’ What then shall be said of an election where there was no precept to read, either before or after, and where even the copy they had of it was put in a pocket?

But, after all, did any person ever hear of a man being brought into court by the *copy* of a summons, charged upon a *copy of a horning*, or imprisoned upon a *copy of a caption*?—What would the messenger deserve, who should dare to attempt it? How, then, MEN and BRETHREN, did it enter into the inside of your heads, that the great assembly of the nation could be called upon the *authority of copies*? At any rate, what the Devil had you to do with them? A copy of a caption, or other executive writ, would, at least, be directed *to a messenger*; but surely the copies of the sheriff’s precept were not directed to *Convener James Craig*.

It is said that Sir Laurence Dundas is not the member of ministry, and that Mr Miller is the man according to their heart. It may be so; but some few inconveniences might follow, if the principles upon which the favourite election have been conducted are allowed to go to precedent, even supposing it in the power of a minister to influence it. If no precept be necessary, no crown writ is necessary. The electors may, at any time, strip the officers intrusted by law with the executive part of calling parliaments; or, in other words, they may divest the crown of its great prerogative, and assemble at their own good pleasure. In short, I verily believe that the election and return of William Miller, Esq; are more irregular and

† 4th Inst. 49.

and unconstitutional, than those of any member to *the rump*, or rebellious parliaments in the days of Charles I.

* * * * *

And now, *Mr Remarker*, a few words with you. From perusing the late shoals of political papers, you have furnished your memory with a pretty collection of words and terms, while the desperate thickness of your skull has denied access to the ideas belonging to these words. A pallet of colours will not make a painter. He may, indeed, after much practice, arrive at the execution of marbled paper, or such fable pictures as adorn the volumes of *Tristram Shandy*.

Pray where are the *positions* and the *arguments* which you say the council-address *employs**? That paper contains only a simple state of facts, without a single argument or position.—Consult your dictionary for the difference of these things.—You say the gentlemen of the council have converted the terms truth and falsehood, and have been unable to distinguish reality from fiction †. Had they *converted* the terms truth and falsehood, they must positively have mistaken falsehood for truth.—I say again, look your dictionary.—Indeed, poor gentlemen, it is no wonder they should be at some loss to distinguish, since, according to you, Sir, neither reality nor fiction are at present to be seen; nay, they will not exist till the great senate of the nation gives them birth upon the 16th of March. There has, indeed, been a known legal quorum of council, by which the affairs of the city have been managed these hundred and fifty years; but what then? The members must not mention it; for, by you they are informed, that they have the misfortune to be parties to the most terrible law-plea that ever was; to a plea, in which (you say) the ‘*the very litigation is in dispute.*’

The critic goes on to remark, that, if Provost Hamilton had ever been able to give his authority to the most trifling business, that was rendered

* Remark, p. 1.

† Remarks, p. 2.

rendered impracticable by *the indecent monopoly* of his person†*. What was it that was rendered impracticable? the business or the authority? Mr Hamilton gave immediate access to every person who had any thing to do with him. Did not the sheriff issue his precept to Mr Hamilton, and take his receipt for it? Was not that *act of issuing*, and *that receipt*, the only pretence, authority, or excuse for the election of Mr Miller? Do you now tell us that Mr Hamilton could not give his authority to any public transaction? Matters are bad enough with you. You need not make them worse.

If the precept could legally be issued to Mr Hamilton, it could certainly be legally executed by him, either in whole or in part. What remained to be done, fell to the province of his successor.

In England nothing is more common; a precept is given to one mayor, and executed by his successor, who, in the eye of law, is the very same officer with the former; and, by the latest writers on the subject, we are assured, 'That the legality of such returns has not been disputed, even where the election has been controverted.' This circumstance points out another error the gentlemen of your party have fallen into. They have fancied, that the members of a corporation have each of them a part of the rights of that corporation in their persons, which they are separately entitled to exercise. Nay, the annotator on the Narrative‡ goes the length to term this an *inherent right and freehold in the person of the electors*, which he asserts the provost's failure in duty could not deprive them of; and thence they infer, that the members of the council of Edinburgh whose offices were *expiring*, had a better right to elect, than those who were *coming in*. I am entitled, once more, to use that gentleman's own language, and ask, Whence such a dream originated?

A

* The author of the remarks is desirous to explain what he means by *the indecent monopoly of a man's person*.

† See remarks, p. 2. in fine.

‡ Pag. 44.

A corporation is 'an artificial body of men, composed of different 'constituent members, *ad instar corporis humani*, the ligaments of 'which body-politic are the franchises and liberties thereof*.' The corporation itself, therefore, is the only object of the law. The whole rights and freeholds are inherent in its proper artificial body, and not in the bodies of any of its members.

The purpose of the crown writ was, that a member be returned for the *corporation of Edinburgh*; but whether Deacon A of one week, or Deacon B of the following one, voted as a member, is the most insignificant of any possible circumstance. The sole requisite is, that the corporation be complete in all its members at the time of the election.

Provost Hamilton came to town with the probable expectation of being able to do his duty in person. An expectation, for some time, seconded by the medical gentlemen attending him. In the mean time, the sheriff issued his precept. The plain question then was, Whether the provost or the precept were essential to the business? If they were essential, was it not proper in Provost Hamilton, since disappointed of presiding in person, to execute the precept so far as legally could be done, and then to deliver it to his successor, under whose authority alone a due election could be made? A due election accordingly took place; and a return was made of Sir Laurence Dundas by the conjunct common clerk of the borough, in the exact terms of the sheriff's precept, *witnessing* the truth, and nothing but the truth.

The remarker admits, that the second electors were in possession of the precept; but, says he, *How did they obtain it?* a very pertinent question to be sure; he instantly answers himself, 'By *feloniously*† *with-holding* it to answer their own purposes.' 'Aha, my
F 'coushine,

* New Abridgement of the Law, p. 499.

† Remarks, p. 3. in medio,

‘coushine, ’pon my shoul †, the college of Kilkenny would be honour’ by you.’

This behaviour of the council, he adds, ‘was so *rude* and so *enigmatical* ‡, that it must be left to their own explanation.’ Better and better still. Our council-gentlemen, it seems, are very clever fellows; they can be *rude*, and yet nobody can know whether they have been so or not: They can, at the same time, be both *rude* and *enigmatical*; and, after all, it must be left to their own explanation *what they were*:

—————You write *Philippics*, an’ be damn’d.
Write *deacons advertisements*.

Or, since it might be as dangerous to thy being to stop too suddenly the evacuation of thy brain, as to stop a *running* from thy body, discharge it copiously upon the heroes of Archer’s-hall. Celebrate the wonderful metamorphosis effected in a moment on the grumbling deacons, by the mighty Duke of Buccleugh ||. How like the wise men they beheld the star on his breast; and worshipped him. Tell what a profound trance of serious thought the whole convenery fell into at Fortune’s table, though covered with luxury and liquor ††. How after enlistment, by dinner, they were like Dutch recruits ordered to jail; each man, nobly, firmly, and resolutely marching into Bilbo upon his own legs. Declare how they *unanimously* forgot their night caps, and how becoming a thing it was when each beheld his brother with a new one. Explain how every manly deacon was taught to look upon

† Beau Stratagem.

‡ Remarks, p. 3.

|| Several of them were heard to swear most horribly, that they had engaged with the Convener for the honour of the Trades, and would not *be turned over*.

†† In the heat of the dinner drink, the deacons sent Sir Laurence Dundas a letter, the ministry of the virtuous Alexander Hart, in which they tell him that, *after the most serious deliberation*, they had determined to vote for Mr Miller.

upon his neighbour as a —— and how by this social maxim, all the gentlemen were made to keep fast hold of each other. Prove that they were not in prison, because the door was kept all day by a Taylor. Tell how John Lindsay offered his faithful mastiff, the guardian of his skins, to watch by night the carcases of the convenery, and how this post of Cerberus was (from a principle of gratitude) supplied by a clumsy Baker, growling at the door during the hours of darkness, like the lion (that was) in the Infirmary. Tell how Deacon Phinn whinged to the Lord, and how —— blasphemed him.— Contrast the boreal mirth of the stern Convener, with the wink, the nod, and the political smile of the *quondam* Provost.—Over all, place the judicious, thoughtful, pale faced Mr Peter, despising heartily the Circean route, and revolving in his mind the very precarious issue of this infernal racket!

PRECEPT QUORUM, Esq;

...and how by the local market, all the
were made to keep full hold of each other. However, they
in person, because the door was kept all day by a Tabor
John Lindley offered his assistance, the question of his
which by night the candles of the assembly, and how this
...was (from a principle of general) supplied by
Baker, growing at the door during the hours of dark-
ness (that was) in the lantern. Tell how Peter
...whipped to the Lord, and how ...
the house, with the light of the lantern, with the wind, the
...the political state of the country. Over all, place
...thoughtful, pale faced Mr. Peter, denoting heavily the
...and revolving in his mind the very problems that of
...!

RECEIPT QUORUM, 1869



